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Rosetta Stone v. Google (Joint Appendix)

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Vol. IX, Tab 47 - Ex. 27 - Deposition of Eric Eichmann (Rosetta Stone Chief Operating Officer)

Eric Eichmann

Rosetta Stone

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Certified
Transcript

ROSETTA STONE LTD,)

Plaintiff,)

vs.)

Case No. 109-CV-00736

GOOGLE INC.,)

Defendant.)

VIDEOTAPED DEPOSITION OF ERIC EICHMANN

WASHINGTON, D.C.

MARCH 3, 2010

The videotaped deposition of ERIC EICHMANN was
convened on Wednesday, March 3, 2010, commencing
at 9:01 a.m., at the offices of Skadden Arps,
located at 1440 New York Avenue, Northwest,
Washington, D.C., before Paula G. Satkin,
Registered Professional Reporter and Notary
Public.

Job no.: CS242162

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1 A. I they she's part of the account
2 team for Rosetta Stone.

3 Q. Do you know what her function was
4 with Rosetta Stone?

5 A. I don't know the position.

6 Q. Do you know who at Rosetta Stone
7 interacted with Ms. Aguilar?

8 A. Can you repeat the question.

9 Q. Do you know who at Rosetta Stone
10 was in contact with Ms. Aguilar in connection
11 with Google's ad words account?

12 A. I know who in her organization was
13 in charge of the Google relationship at
14 different times and I would imagine those people
15 interacted with Christina, but I don't have
16 specific data that tells me this particular
17 person interacted often with Christina.

18 Q. Sure. Who were the persons who
19 were in charge of the relationship with Google
20 during the various time periods that you have
21 been at Rosetta Stone?

22 A. Dates might not be right, so --

23 Q. Do the best you can.

24 A. When I started Rosetta Stone in
25 2006 we had a person by the name of Matt Connor,

1 he was in charge of our DTC group.

2 Q. DTC stands for?

3 A. Direct consumer. It's vertical.

4 We call it vertical, so business segment, if you
5 will. In that vertical we advertise off-line
6 and we capture the leads that are generated from
7 that advertising, either on our website or on
8 call centers, so that's the vertical. So the
9 person in charge of that vertical would have the
10 on-line marketing components.

11 Matt Connor was in that position.
12 After Matt Connor we had Daavi Zain. Under Matt
13 Connor there was Lena Huang. Under Daavi, I
14 think Lena was there for a while, but then we
15 had Julie, last name Longley. I don't remember
16 the last names.

17 Q. Did she replace Lena?

18 A. She replaced Lena. The
19 responsibilities might not have been one to one,
20 but and then after that we also had April Garvey
21 and we had Chris Klipple. Chris was more
22 technical in nature and most recently we have
23 Van Leigh.

24 Q. Now, did April Garvey have the
25 analogous role that Daavi Zain and Matt Connor

1 had?

2 A. Not really, sorry about that. I
3 should clarify.

4 April was focused on on-line only.

5 Q. Okay.

6 A. Not the whole DTC business.

7 Q. Did she report to Daavi Zain?

8 A. She did not. I brought her in
9 after Daavi left. April was a consultant for
10 us.

11 Q. Did someone replace Daavi Zain
12 after he left?

13 A. No. Van Leigh took on the on-line
14 piece, so we kept the structure we had with
15 April. Van Leigh and another person are in
16 charge of the off-line media.

17 Q. So after Daavi Zain left you
18 essentially created two separate functions or
19 separate positions?

20 A. They're two positions that existed
21 before. We didn't have an oversight position.

22 Q. Got it. April Garvey and Van
23 Leigh both were in charge of the on-line
24 marketing branch of the responsibilities?

25 A. That's right.

1 Q. And did Chris Klipple report to
2 Ms. Garvey?

3 A. He did, except April was not an
4 employee of the company. So effectively for all
5 the functions Chris was reporting into April for
6 the content, but I think administratively that
7 probably wasn't the case because an employee
8 could not report into a consultant.

9 Q. Who does Van Leigh have working
10 under him to assist in the on-line marketing
11 function?

12 A. I think we are hiring for that
13 position.

14 Q. Is there someone there now?

15 A. Not that I know, no.

16 Q. Can we try and attach roughly
17 timeframes to these various individuals? We
18 have Matt Connor in 2006?

19 A. Matt Connor was before then. He
20 was there, I think he left May 2007. I'm not
21 sure about these dates.

22 Q. Sure. Just your best
23 recollection.

24 A. Then Daavi came in probably in
25 June. Daavi stayed until probably Q3, end of

1 Is it possible that that number on
2 Exhibit 25, that 25.9 percent number, could that
3 be referring to some subcategory of paid or
4 organic?

5 A. Not the way I read it here. I'm
6 just looking at visitors. It depends how you
7 define visitors. They could be consistent if
8 visitors is different than traffic, so traffic
9 could be number of paid generated, number of
10 visits, that's different than number of
11 visitors.

12 Q. So, Mr. Eichmann, among the topics
13 that you're here today to discuss, you have
14 included the profits, revenues, costs and sales
15 from 2002 to the present; right, including
16 reasons for increases or decreases in profits,
17 revenues, costs and sales.

18 With respect to the company's
19 profits has Rosetta Stone ever conducted an
20 analysis to determine whether it suffered any
21 losses in profits as a result of Google's
22 trademark policies that are at issue in this
23 lawsuit? And my question is separate from the
24 expert report that's been prepared for the
25 litigation?

1 MR. ETTINGER: Do you understand
2 the question?

3 THE WITNESS: Yes. We've -- I
4 don't think we have done a comprehensive study
5 in that regard. However, there are many things
6 that we've looked at that point to losses. I'll
7 mention a couple of them. One, when we don't
8 have pirates bidding on Google or when we have
9 pirates that appear appealed bid on Google our
10 conversion rates go down significantly, our
11 click through Google goes down. Our bidding
12 what we have to pay on a cost per click basis
13 goes up.

14 We also now.

15 BY MR. OBLAK:

16 Q. Can we stop there for a second?

17 A. Sure.

18 Q. Two questions. One, have there
19 been periods of time when Rosetta Stone has not
20 had pirates bidding on its trademark Duerhing
21 your employment?

22 A: Yeah. There are periods of time
23 when they don't bid or at least we don't see
24 them bidding, but we're talking about days where
25 they're not there and then they appear again so

1 I'm not talking about like, okay, for 18 months
2 there are not pirates. Having said that I think
3 the number of pirates and the attacks to our
4 trademark have significantly increased over the
5 last year and I think that in part is due to the
6 fact that we're higher profile brand. We have a
7 lot more brand awareness. There's more searches
8 to Rosetta Stone so this's a lot more equity out
9 there which makes pirates and competitors and
10 others profiting from our trademark more
11 interested in bidding to our key words so
12 bidding.

13 Q. With respect to that description
14 that you've provided am I correct there has not
15 been a comprehensive analysis that has resulted
16 in some quantification of perceived lost
17 profits?

18 A. Not a comprehensive one that I
19 know of in the company. However, I think that
20 within our expert and within this process we've
21 looked at I can tell you that the -- the
22 decreases in conversion and the increases in
23 cost per click are dramatic enough that we know
24 it's a significant impact to our business and so
25 there's that -- that is quantifiable, but what's

1 not quantifiable and is significant than can't
2 to us is the loss of sales because people are
3 going to another website.

4 The -- how much it hurts our brand
5 because people end up buying from sites that are
6 not authorized resellers from sites that are
7 pirates and then not to mention also, and I had
8 mentioned this do you before how as a premium
9 brand you want to maintain a very clear, very
10 tight boundary around the prices that you have
11 and it's hurting our brand significantly to have
12 pirates and others selling our software at
13 prices that are just not authorized.

14 Q. So with respect to the different
15 forms of injury you've described, and again I'm
16 excluding from the question what was prepared in
17 connection with this litigation by Rosetta
18 Stone's damages expert, has Rosetta Stone
19 conducted an analysis that's resulted in a
20 quantification of any of those categories of
21 injury that you've described?

22 A. I think we've looked at those
23 categories and we probably look at what the
24 potential impact is but a comprehensive study
25 I'm not aware of all those elements except that